

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE: TRANSDATA, INC. SMART)
METERS PATENT LITIGATION,) Case Number 12-ml-2309-C

MEMORANDUM OPINION AND ORDER

Defendant OG&E has filed a Motion to Exclude Certain Opinion Testimony of Plaintiff's Expert Dr. Mehrdad Ehsani (Dkt. No. 510). According to Defendant OG&E, Dr. Ehsani has offered opinions asserting infringement based on meters which Plaintiff never accused as infringing. OG&E argues that when Plaintiff submitted its infringement contentions it alleged only that meter GE I-210, model number 1009251805, infringed Plaintiff's patents. Despite this limited assertion of infringement, Dr. Ehsani's expert report analyzed infringement of six different meters. All meters considered by Dr. Ehsani were GE I-210+c. OG&E argues Dr. Ehsani's opinions should be stricken, as they are not relevant to any of the issues in this case. In response, Plaintiff argues that it repeatedly disclosed the GE I-210+c meter as infringing, that Defendants conducted discovery on this meter, and that Defendant was well aware of Plaintiff's claims regarding the infringing nature of the GE I-210+c meter.

This is Plaintiff's second attempt to modify its contentions in an untimely manner. As the Court noted in its ruling granting Defendant CenterPoint Energy Houston Electric, LLC, and San Diego Gas & Electric Company's Motion to Strike, see Order, Dkt. No. 505, a broad description of an infringing meter is insufficient. See ASUS Computer Int'l v. Round Rock Research, LLC, Case No. 12-CV-02099 JST(NC), 2014 WL 1463609 (N.D. Cal. Apr. 11, 2014). Thus, to the extent Plaintiff argues that its identification of the GE I-210

was sufficient to encompass the GE I-210+c, that argument is without merit. Because Plaintiff identified only the GE I-210 meter in its infringement contentions, its expert is limited to identifying the ways in which that specific meter infringes on Plaintiff's patent; any other opinion is beyond the scope of the issues in this case and therefore will not be permitted.

For the reasons set forth herein, OG&E's Motion to Exclude Certain Opinion Testimony of Plaintiff's Expert Dr. Mehrdad Ehsani (Dkt. No. 510) is GRANTED.

IT IS SO ORDERED this 28th day of August, 2015.



ROBIN J. CAUTHRON
United States District Judge